



Federal Communications Commission
Washington, D.C. 20554

DA 05- 1405

May 19, 2005

David K. Moskowitz, Esq.
Executive Vice President & General Counsel
EchoStar Satellite L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112

Re: EchoStar Satellite L.L.C.: Notice of Modification of DBS Space Station Authorization for the 61.5° W.L. Orbital Location, IBFS File No. SAT-MOD-20050421-00087; Request for Special Temporary Authority, IBFS File No. SAT-STA-20050421-00088.

Dear Mr. Moskowitz:

On April 21, 2005, EchoStar Satellite L.L.C. (EchoStar) filed a modification application pursuant to our streamlined fleet management procedures requesting authority to relocate its Direct Broadcast Satellite (DBS) satellite EchoStar 4 from the 157° W.L. orbit location to the 61.5° W.L. orbit location.¹ It also filed a request for special temporary authority (STA) to relocate EchoStar 4 from 157° W.L. to 61.5° W.L. (61.5° STA).² For the reasons set forth below, we deny the 61.5° Fleet Management Modification and deny the 61.5° STA Request.

In its 61.5° Fleet Management Modification, EchoStar notes that it has two pending STA requests to relocate the EchoStar 4 satellite. One requests an STA to relocate EchoStar 4 to the 77° W.L. orbit location for 180 days (77° STA).³ The other requests an STA to move EchoStar 4 to 61.5° W.L. pending Commission action on the 77° STA Request. Ultimately, EchoStar states it intends to operate the EchoStar 4 satellite at the 77° W.L. orbit location under a Mexican Broadcast Satellite Service (BSS) authorization granted to QuetzSat, an entity licensed by the Secretariat of Communications and Transportation of the United Mexican States. EchoStar states that EchoStar 4 must be at the 77° W.L. orbit location by July 1, 2005 to satisfy the International Telecommunication Union's (ITU) bringing-into-use date for the Mexican authorization.⁴

¹ EchoStar Satellite L.L.C., IBFS File No. SAT-MOD-20050421-00087 ("*61.5° Fleet Management Modification*").

² EchoStar Satellite LLC, IBFS File No. SAT-STA-20050421-00088 (*61.5° STA Request*). EchoStar requests the STA for 30 days, which does not require a public notice. 47 C.F.R. § 25.120(b)(4).

³ EchoStar Satellite L.L.C., IBFS File No. SAT-STA-20050321-00068 (*77° STA Request*). This application was placed on Public Notice on April 22, 2005. See Public Notice, Policy Branch Information, Report No. SAT-00286 (April 22, 2005).

⁴ *61.5° STA Request* at 2.

The Commission adopted fleet management procedures to streamline the processing of satellite fleet management modifications.⁵ The procedures adopted under Section 25.118(e) of the Commission's rules allow satellite operators to rearrange satellites in their fleets among their assigned orbital locations to reflect business and customer considerations where no other public interest factors are adversely affected.⁶ Accordingly, a space station operator may modify its license to this end without prior authorization, but upon 30 days notice to the Commission and any potentially affected licensed spectrum user.⁷ To ensure that the streamlined procedure is used only in the appropriate circumstances, the Commission requires operators to certify that it meets nine specific requirements.⁸

In its 61.5° Fleet Management Modification, EchoStar included these certifications. EchoStar, however, also states that if we grant its 77° STA Request prior to EchoStar 4 satellite's arrival at the 61.5° W.L. orbit location, EchoStar "would immediately redirect the satellite to 77° W.L. and forgo the fleet management maneuver."⁹ We find that this statement contradicts its fleet management certifications, and brings the application outside the scope of Section 25.118(e). Specifically, the statement that it will "forgo the fleet management maneuver" contrasts with its certifications that it "will relocate EchoStar 4" to 61.5° W.L. and that it "will limit operation of the space station to Tracking, Telemetry, and Control" functions during the relocation.¹⁰ In sum, EchoStar is using the 61.5° Fleet Management Modification as a mechanism to allow it to begin to drift EchoStar 4 toward 77° W.L., an unauthorized location, prior to the Commission's consideration of the 77° STA Request and the opportunity for public comment. This modification is inconsistent with the rationale underlying the Commission's fleet management procedures. We therefore deny the modification.

We also find that EchoStar has not justified a grant of special temporary authority to relocate EchoStar 4 to 61.5° W.L. The Communications Act authorizes the Commission to grant temporary authority in extraordinary circumstances where such temporary operations are in the public interest and where delay in operation would prejudice the public interest.¹¹ Similarly, the Commission's rules governing satellite facilities permit grants of special temporary authority, for a period not to exceed 180 days, under extraordinary circumstances.¹² A request for special temporary authority must contain the full particulars of the proposed operation, including all facts sufficient to justify the temporary authority sought and the public interest therein. When determining whether to grant an STA, "convenience to the

⁵ Amendment of the Commission's Space Station Licensing Rules and Policies, *Second Report and Order*, 18 FCC Rcd 12507, ¶ 7 (*Fleet Management Order*).

⁶ *Fleet Management Order* at ¶ 7.

⁷ *Fleet Management Order* at ¶ 9.

⁸ 47 C.F.R. § 25.118(e)(1)-(9).

⁹ *61.5° Fleet Management Modification* at 2.

¹⁰ *61.5° Fleet Management Modification* at 3, 4.

¹¹ 47 U.S.C. § 309(f).

¹² 47 C.F.R. § 25.120.

applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose."¹³

EchoStar's 61.5° STA request notes that it has filed the 61.5° Fleet Management Modification, but claims that grant of the STA will permit EchoStar "more quickly" to place EchoStar 4 in a "position closer to 77° W.L."¹⁴ It also states that the timely relocation and operation of EchoStar 4 to the 77° W.L. orbit location prior to July 1, 2005 will help facilitate the bringing-into-use of the Mexican authorization.¹⁵ These do not constitute extraordinary circumstances, but rather are for the convenience of EchoStar in moving the satellite to the 77° W.L. orbit location. In addition, the Commission has indicated that preserving ITU date priority is not a public interest factor that it will consider when evaluating applications.¹⁶ Accordingly, we deny EchoStar's STA request to move EchoStar 4 to 61.5° W.L.

Please contact Alyssa Roberts of my staff, (202) 418-7276 or Alyssa.Roberts@fcc.gov, if you have any questions.

Sincerely,

Thomas S. Tycz
Chief, Satellite Division
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¹³ 47 C.F.R. § 25.120.

¹⁴ *61.5° STA Request* at 2.

¹⁵ *Id.*

¹⁶ See VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820, 14824 (Int'l Bur. 2004).